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*Kevin L. Smith*

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ATTORNEYS FOR APPELLEE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 53A04-0802-CR-89

APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable Mary Ellen Diekhoff, Judge  
Cause No. 53C05-0703-FB-274 and 53C05-0610-FB-551

**FRIEDLANDER, Judge**

Amanuel Girma pleaded guilty to Possession of Cocaine,<sup>1</sup> a class D felony, and Criminal Deviate Conduct,<sup>2</sup> a class B felony. On appeal, he challenges the fifteen-year consecutive sentence imposed for the criminal deviate conduct conviction. He presents the following consolidated and restated issues for review:

1. Did the trial court abuse its discretion when it found as an aggravating circumstance that the harm suffered by the victim was significant and greater than the elements necessary to prove the commission of the offense?
2. Is Girma's sentence inappropriate in light of his character and the nature of the offense?

We affirm.

Just after midnight on July 7, 2006 in Bloomington, A.P. closed the door to her upstairs bedroom and went to sleep. Several of her friends had come home and were entertaining men downstairs whom they had met at the bars that night. Girma was one of the guests. A.P. did not know Girma and was not involved in the social gathering.

At some point, Girma left the group and went upstairs. He entered A.P.'s bedroom while she was asleep and proceeded to remove her underwear. A.P. awoke to find the stranger on top of her with his mouth on her vagina. Girma then pulled down his pants, exposing his penis, and touched his penis to her vagina. When A.P. spoke up, Girma quickly got up and fled downstairs and out of the residence.

On October 17, 2006, the State charged Girma under cause number 53C05-0610-FB-

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<sup>1</sup> Ind. Code Ann. § 35-48-4-6(a) (West, PREMISE through 2008 2nd Regular Sess.).

<sup>2</sup> Ind. Code Ann. § 35-42-4-2(a)(2) (West, PREMISE through 2008 2nd Regular Sess.).

551 (FB-551) with criminal deviate conduct, a class B felony, and a warrant was issued for his arrest. Thereafter, on March 22, 2007, Girma was arrested following a drug transaction with an undercover police operative. As a result, the State charged him under cause number 53C05-0703-FB-274 (FB-274) with dealing cocaine, a class B felony. Thereafter, on August 14, 2007, the State amended the charging information in FB-551 to include a second count, class B felony rape.

After DNA results came back linking Girma to the sexual assault, Girma entered into a plea agreement with the State on November 7, 2007. Pursuant to the agreement, Girma pleaded guilty to criminal deviate conduct as charged under FB-551 and to an amended charge of class D felony possession of cocaine under FB-274. In addition to agreeing to the conviction upon a lesser drug charge, the State also agreed to dismiss the rape charge. The parties agreed to a three-year suspended sentence for possession of cocaine. The plea agreement, however, left the sentence for criminal deviate conduct and whether the sentences would be concurrent or consecutive to the discretion of the trial court.

At the sentencing hearing on December 14, 2007, twenty-two-year-old A.P. read a victim impact statement into the record. A.P.'s mother also testified regarding the effects of the attack upon her daughter. Girma called several witnesses, though he did not make a statement on his own behalf. At the conclusion of the sentencing hearing, the trial court sentenced Girma to fifteen years executed for criminal deviate conduct. Pursuant to the plea agreement, he was also sentenced to three years suspended for possession of cocaine. The court ordered the sentences to be served consecutively. Girma now appeals.

1.

Girma initially claims the trial court abused its discretion by finding as an aggravating circumstance that the harm suffered by A.P. was significant and greater than the elements necessary to prove the commission of the offense. He claims this aggravator was improperly based on the uncrossed and unverified information provided by the victim.<sup>3</sup>

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. A trial court may impose any sentence authorized by statute and permissible under the Indiana Constitution regardless of the presence or absence of aggravating or mitigating circumstances. *Id.* Thus, in *Anglemyer*, our Supreme Court held:

Because the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to “properly weigh” such factors.

*Anglemyer v. State*, 868 N.E.2d at 491. Circumstances under which a trial court may be found to have abused its discretion include: (1) failing to enter a sentencing statement, (2) entering a sentencing statement that includes reasons not supported by the record, (3) entering a sentencing statement that omits reasons clearly supported by the record, or (4) entering a sentencing statement that includes reasons that are improper as a matter of law.

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<sup>3</sup> In a related argument, Girma asserts that his due process rights were violated because A.P.’s victim impact statement constituted hearsay and he was not afforded an opportunity to rebut her statement. Girma does not explain, and we fail to see, how A.P.’s in-court statement could constitute hearsay.

*Anglemyer v. State*, 868 N.E.2d 482.

Girma does not dispute that a trial court may consider as an aggravating circumstance that the harm, injury, or damage suffered by the victim of the offense was significant and greater than the elements necessary to prove the commission of the offense. *See Ind.Code Ann. § 35-38-1-7.1(a)(1)* (West, PREMISE through 2008 2nd Regular Sess.). The crux of A.P.’s argument on appeal appears to be that in this case the aggravator was based upon inaccurate and unreliable information. Specifically, Girma asserts that he was not permitted to question A.P. regarding her allegation that she had contracted a sexually transmitted disease from him or to explore the extent of her emotional distress following the attack.<sup>4</sup>

Following A.P.’s victim impact statement, defense counsel asked the trial court, “is it at all possible for me to call [A.P.] as a witness and ask her a question?” *Appellant’s Appendix* at 211. The State objected, and the trial court inquired as to what the defense had in mind. Counsel responded: “I hate to get into this, I really didn’t, well it’s the human papillomavirus. I have no reason to believe that [Girma] has that, and what can I say? I mean these were three college girls that seem to be fun, loving, kids”. *Id.* The court denied Girma’s request to question A.P. regarding her claim that she had contracted HPV from

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<sup>4</sup> In her victim impact statement, A.P. emphasized the emotional damage Girma caused by his “extremely offensive and unprovoked” attack on a sleeping woman. *Appellant’s Appendix* at 209. In addition to shattering her “sense of reality” and scaring her for life in several specific ways, A.P. explained that the attack caused her to suffer from depression, requiring therapy and antidepressants. *Id.* A.P. also indicated that she immediately withdrew from Indiana University following the attack and moved home with her parents, where she still remained. A.P. also indicated that she contracted the Human Papillomavirus (HPV), a sexually transmitted disease, during the attack.

Girma.<sup>5</sup>

Victim impact statements are an integral part of the sentencing process, and trial courts are required to receive and consider them. *See Coum v. State*, 779 N.E.2d 84 (Ind. Ct. App. 2002). *See also* Ind. Code Ann. § 35-38-1-8.5 (West, PREMISE through 2008 2nd Regular Sess.). Among other things, “the statement allows for a degree of catharsis by the victim or the victim’s representative, permitting him or her to express their recommendation as to a sentence, the impact a crime had, and their feelings toward the defendant, all in a judicial setting.” *Coum v. State*, 779 N.E.2d at 93. Regarding these statements, we have stated:

we would not want to require victims or victim representatives to have to make their statement under oath with the ever-present threat of a perjury charge limiting their ability to speak freely; nor would it be wise, in our view, to subject a victim or victim’s representative to defense cross-examination regarding comments made in a victim impact statement as a general rule. Nonetheless, when a victim impact statement strays from the effect that a crime had upon the victim and others and begins delving into substantive, unsworn, and otherwise unsupported allegations of other misconduct or poor character on the part of the defendant, caution should be used in assessing the weight to be given to such allegations, especially where the defendant is not provided an opportunity to respond directly to them.

*Id.*

In the instant case, it cannot be disputed that A.P.’s statement focused upon the effect the crime had on her and did not stray into improper matters. Further, though he did not take advantage of it, the trial court provided Girma with the opportunity to make a statement and refute the allegation that he gave A.P. a sexually transmitted disease. Moreover, in any

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<sup>5</sup> Contrary to Girma’s assertions on appeal, he did not indicate to the trial court that he wanted to question A.P. about the extent of her emotional trauma. Rather, as set forth above, he sought a limited inquiry into how

event, it appears the trial court did not even rely upon this disputed information when sentencing him, as the trial court discussed the crime and its effect upon A.P. and made no mention of A.P. contracting HPV from Girma.

In its sentencing statement, the trial court discussed the nature of Girma's offense and observed the lasting impact it has had on A.P. The young woman was victimized by a complete stranger in her own bedroom while she was sleeping. As the trial court observed,

[this was] not only...an act of a physical nature, but it was one where [A.P.] will never again look at the world in the same way. She will never again trust anyone, feel the same anywhere, do anything without that night being somewhere imprinted on her memory. That is what you took. You took it as a complete stranger and you took it without regard to what it is that you had done.

*Appellant's Appendix* at 246. In light of the victim impact statement provided by A.P., which recounted the immense and long-lasting emotional damage the crime has caused and how it has altered her life, we cannot say that the trial court abused its discretion in finding that the harm suffered by A.P. was significant and greater than the elements necessary to prove the commission of the offense. *See Filice v. State*, 886 N.E.2d 24 (Ind. Ct. App. 2008), *trans. denied*.

## 2.

Girma also asserts that his sentence is inappropriate. With little analysis aside from the issue addressed above regarding the victim impact statement, Girma claims his fifteen-year sentence is inappropriate because he “has no prior criminal convictions and pled guilty

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A.P. may have contracted HPV.

and...the information regarding the nature of the offense was inaccurate and never submitted to cross-examination.” *Appellant’s Brief* at 6.

We have the constitutional authority to revise a sentence if, after consideration of the trial court’s decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482. Although we are not required under App. R. 7(B) to be “extremely” deferential to a trial court’s sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Thus, “we exercise with great restraint our responsibility to review and revise sentences.” *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Moreover, we observe that Girma bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

Girma has done little to persuade us that his sentence is inappropriate. With respect to his character, Girma simply notes that he accepted responsibility through his guilty plea and that he has no criminal history. The record reveals that Girma did not “accept responsibility” for his crime against A.P. until the eleventh hour when DNA results linked him to the sexual assault. Thus, his decision to plead guilty should be viewed more as a pragmatic decision than as remorsefulness or an acceptance of responsibility. Further, he received a substantial benefit from the plea agreement in that his drug charge was reduced from B felony dealing to D felony possession, his sentence for possession of cocaine was fully suspended, and the rape charge was dismissed. Under these circumstances Girma’s guilty plea is not entitled to



significant weight. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (“a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one”), *trans. denied*. Moreover, while Girma does not have any prior convictions, the record reveals that since becoming an adult he has had several criminal charges (battery, drug offenses, and driving offenses) filed against him, which apparently has not curbed his antisocial behavior that has now resulted in two unrelated felony convictions. *See Monegan v. State*, 756 N.E.2d 499 (Ind. 2001) (history of four prior arrests is evidence that defendant’s antisocial behavior was not deterred by numerous encounters with the law).

We now turn to the nature of the offense. Girma took advantage of a young woman while she was asleep in her own bed. A.P. awoke to find a complete stranger with his mouth on her vagina and then touching his penis to her vagina. This senseless, repugnant act resulted in A.P. dropping out of college just before her senior year and moving back home with her family. She entered into a nine-month treatment program for depression, requiring therapy and various antidepressants. A.P. explained that the attack shattered her sense of reality and left her with many emotional scars that she will have to deal with throughout her life. She now deals daily with issues including trust, communication, and sexuality. A.P.’s mother testified that her daughter is still scared and is no longer the strong young woman she was before the attack.

Girma has failed to persuade us that his fifteen-year sentence for class B felony

criminal deviate conduct is inappropriate in light of the nature of the offense and his character. Further, as his felony offenses were entirely unrelated and committed nine months apart, we conclude that it was not inappropriate to order the sentences to be served consecutively.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur